

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: - 05.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.245 of 2006

Nagaraj

... Petitioner

vs.

1. The Secretary to Government,
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.

2. The District Magistrate and
District Collect,
Krishnagiri District,
Krishnagiri.

... Respondents

Petition under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus to call for the records relating to detention order No.S.C.18/2005, dated 20.1.2006, passed by the second respondent, set aside the same, direct the respondents to produce the body of the detenu by name Nagaraj, S/o.(late) Kalappa, aged about 37 years, now confined in Central Prison, Salem, before Court and set him at liberty.

For Petitioner : Mr.A.K.S.Thahir

For Respondents : Mr. M.Babu Muthu Meeran,
Addl. Public Prosecutor.

O R D E R

P. SATHASIVAM, J.

The petitioner challenges the detention order, dated 20.01.2006, detaining him as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. Learned counsel appearing for the petitioner, at the foremost, submitted that even assuming without admitting that the detenu involved in the commission of various offences of theft and cheating, the same can never be construed as acts prejudicial to the maintenance of public order or disturbing public peace. It is also contended that there is no proximity and continuity to connect the adverse cases and the ground case for detaining him as Goonda by the impugned proceedings. He further contended that there was delay in consideration of the second representation, containing fresh materials/details, hence, the impugned proceeding is liable to be quashed.

4. Learned Additional Public Prosecutor, by placing the relevant records, met both the contentions.

5. It is seen from the grounds of detention that, on 18.1.1990, detenu Nagaraj committed theft of Rs.10,000/- from one Barkath Ali at Hosur Bus Stand and was arrested on 27.07.1990. The said incident relates to the first adverse case registered in Hosur P.S. Crime No.31 of 1990 under Section 379 IPC. According to the Detaining Authority, the said case is still pending trial before Judicial Magistrate No.II, Hosur. As regards the second adverse case occurrence dated 28.2.1994, case was registered against the detenu in Hosur P.S. Cr. No.76/94 under Section 379 IPC. and the same is pending trial before Judicial Magistrate-II, Hosur. The third adverse case relates to Hosur P.S. Cr. No.250/95 for offences under Sections 392 and 398 IPC. It was a case of robbery and the occurrence is dated 30.03.1995. The fourth adverse case relates to Cr. No.1103 of 1998 of Hosur P.S. for offences under Sections 448, 324 & 506 (ii) IPC, the occurrence date being 16.10.1997. This is also pending trial before Judicial Magistrate No.II, Hosur. The fifth adverse case relates to Crime No.38 of 1999 of Hosur P.S. for an offence under Section 302 IPC and the date of occurrence is 21.1.1999. It further shows that the detenu along with his 7 associates assaulted and murdered one Pushparaj with deadly weapons due to previous enmity. According to the Detaining Authority, the said case is pending trial before Judicial Magistrate No.II, Hosur. The sixth adverse case relates to Hosur P.S. Cr. No.257 of 2003 under Sections 332, 397 (ii) and 506 (ii) IPC. The date of occurrence is 17.4.2003. The said case is also pending trial before Judicial Magistrate II, Hosur.

6. The ground case, based on which, the Detaining authority passed the impugned order of detention, relates to an occurrence that took place on 16.11.2005. The Crime Number is 189/2005 for the offence under Section 302 IPC. The details furnished in the grounds of detention show that from 1990 till 2005, the detenu involved in several crimes including robbery (Crime No.250 of 1995); assault and murder (Crime No.38 of 1999); again murder (ground case), all serious and grave in nature. Though the occurrences relate to different years, the criminal activities of the detenu have not stopped at all and he continued to commit crimes. In fact, the particulars available in the documents supplied to the detenu show that the detenu was a hireling engaged to murder one Kubendran. We verified the statement of various persons relating to the ground case. Considering the agile involvement of the detenu in serious crimes, we are satisfied that there is no force in the contention made by the learned counsel for the petitioner.

7. In HCP No.1430 of 2003, similar contention was raised on behalf of the detenu therein, viz., that the adverse cases being old, it would amount to stale ground. While disposing of the said H.C.P. by order dated 20.01.2004, a Division Bench of this Court, rejected the said contention by observing thus,

'what is being seen here is that the criminal activities of the detenu have not stopped at all and he took to the crimes barely within ten months of the second adverse case. This is apart from the fact that we cannot go into the merits of the detention order one way or the other.'

8. In HCP No.761 of 2003, dated 20.11.2003, the Division Bench, after referring to a Constitution Bench Judgment of the Supreme court in Attorney General for India vs. Amratlal Prajivandas (1994 SCC (crl.) 1325), observed that the gravity and nature of the act is also relevant and that it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.

Considering the gravity and nature of the act alleged to have been committed by the detenu and of the fact that he is a hireling, we are in respectful agreement with the above views.

9. Learned counsel appearing for the petitioner, by relying on a decision rendered in HCP No.741 of 2005, dated 25.10.2005, contended that the Detaining Authority has not considered the relevant fact as to whether the act said to have been committed by the detenu had the potentiality to disturb the even tempo of the life of the community, hence, the detention order is to be quashed.

10. We verified the factual details available in the said Division Bench decision. In this regard, it is useful to refer to the decision of the Apex Court reported in 2004 SCC (Cri) 1944 (Commissioner of Police and others vs. C.Anita), wherein, their Lordships have elaborately considered various aspects relating to 'Public Order', 'security of the State' and 'law and order' etc. The following observations in the said decision are relevant,

"7.

.....

..... The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order".

....

8.

9.

10. "Public order", "law and order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense

that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State (See *Kishori Mohan Bera v. State of W.B.* ((1972) 3 SCC 845), *Pushkar Mukherjee v. State of W.B.* ((1969) 1 SCC 10), *Arun Ghosh v. State of W.B.* ((1970) 1 SCC 98) and *Nagendra Nath Mondal v. State of W.B.* ((1972) 1 SCC 498).

11. The distinction between "law and order" and "public order" has been pointed out succinctly in *Arun Ghosh* case. According to that decision the true distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question upon society.

The Court pointed out that (SCC p.100, para 3)

the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.

(See *Babul Mitra v. State of W.B.* ((1973) 1 SCC 393) and *Milan Banik v. State of W.B.* (1974) 4 SCC 504).

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and, therefore, touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well-defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do

not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State" (See *Kuso Sah v. State of Bihar* ((1974) 1 SCC 185), *Harpreet Kaur v. State of Maharashtra* ((1992) 2 SCC 177), *T.K.Gopal v. State of Karnataka* ((2000) 6 SCC 168) and *State of Maharashtra v. Mohd. Yakub* ((1980) 3 SCC 57)).

In view of the legal position evolved by the Supreme Court, we are of the view that the conclusion arrived in the decision dated 25.10.2005 in HCP No.741 of 2005 is to be confined to that case.

11. A bare reading of the order of detention shows that the detenu was a hireling, for, he involved in several theft, robbery and murder cases. The Detaining Authority has highlighted the gravity of his acts, in such circumstances, we are of the view that the Court cannot substitute its own opinions for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant. We are satisfied that there is no vagueness or staleness as claimed by the learned counsel for the petitioner. The incidents highlighted in the grounds of detention coupled with the definite indication as to the impact thereof clearly substantiate the subjective satisfaction arrived at by the Detaining authority as to how the acts of the detenu were prejudicial to the maintenance of public order. Accordingly, we are unable to accept the contention raised by the learned counsel for the petitioner.

12. Coming to the other contention relating to delay in considering the 2nd representation, it is not in dispute that the first representation dated 02.02.2006 was disposed of by the Government without any undue delay. It is the claim of the petitioner that the 2nd representation, dated 2.3.2006, containing fresh materials, ought to have been disposed of without any let up or delay. We verified the said representation as well as the earlier representation sent by the detenu. We find that there is no fresh material or special feature as claimed, in such circumstances, though there was some delay in disposal of the 2nd

representation, we are not in agreement with the contention raised by the learned counsel for the petitioner. It is not in dispute that even the second representation was duly considered and disposed of and that the fate of the said representation was also communicated to the detenu.

13. In the light of what is stated above, we do not find any valid ground for interference. Habeas Corpus Petition fails and the same is dismissed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Secretary to Government, Prohibition and Excise Department, Fort St. George, Chennai 600 009.
2. District Collector & District Magistrate, Krishnagiri.
3. The Superintendent, Central Prison, Salem.
(In duplicate for communication to detenu)
4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.
5. The Public Prosecutor, High Court, Madras.

+ 1 cc to M/s. A.K.S. Thambi, Advocate SR No.28674

HPR(CO)
SR/10.7.2006

सत्यमेव जयते

Order
in

HCP. No.245 of 2006

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